United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/715
28 July 1995

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 715

Case No. 762: THIAM

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry,

Whereas at the request of Oumar Doudou Thiam, a former staff member of the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), the President of the Tribunal, with the agreement of the Respondent, successively extended to 15 December 1991 and 15 February 1992 the time-limit for the filing of an application to the Tribunal;

Whereas, on 13 February 1992, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, further extended to 15 October 1992, 15 January and 15 April 1993 the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 April 1993, the Applicant again filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 23 September 1993, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

> "[To order that certain documents be produced and certain inquiries be conducted].
>
> (a) To order my immediate reinstatement in UNHCR with a permanent contract and at grade P-4, step 5, the level I have since reached in the service of the Secretariat. ...
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> (b) To order payment of my emoluments from 9 January 1985 up until the day of my reinstatement into the United Nations system;
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> (c) To order validation in the United Nations Joint Staff Pension Fund of the amount of this compensation for unwarranted termination;
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> ...
>
> (a) To order, as compensation for loss of sight in the right eye, the retroactive application of the provisions of Appendix D to the Staff Rules relating to loss of function (in this case loss of sight in the right eye). ...
>
> (b) To order the payment to me, as damages and interest, of the sum of 50,000 United States dollars for ill-treatment by the UNHCR Administration and for the injury caused;
>
> (c) To order reimbursement of the additional expenses incurred, up to the amount of 7,000 United States dollars (hotel and transportation costs in England, cost of specialized clinics, etc.).
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> ...
>
> ... to order payment, as compensation for the loss of my personal effects, of the sum of 50,000 Swiss francs, corresponding to the value of my furniture, and 17,000 Swiss francs to reimburse me for the costs incurred as well as for the serious injury sustained as a result of the loss of my personal effects. ..."

Whereas the Respondent filed his answer on 1 February 1994;

Whereas the Applicant filed written observations on 22 September 1994;

Whereas, in response to a request from the President of the Tribunal, the Respondent filed a supplement to his answer on 30 May 1995;

Whereas the Applicant filed a statement and additional documents on 27 June 1993;

Whereas the Tribunal submitted questions on 30 June 1995 to the Respondent, who replied on 7 and 18 July 1995;

Whereas the Applicant submitted comments on 24 July 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR on 4 September 1978 as a Public Information Officer at the P-3 level, on a short-term appointment, which was converted to a fixed-term appointment, with effect from February 1979. From September 1979 to 8 January 1985, the Applicant served as a Programme Officer. His initial appointment was extended repeatedly for six-month and one-year periods to 30 June 1984, whereon it was extended for one month to 31 July 1984, and subsequently to 8 January 1985, when the Applicant separated from service.

During the Applicant's employment with UNHCR, his performance was evaluated in three performance evaluation reports (PERs). The first PER, covering the period from 4 September 1978 to 29 August 1979, gave the Applicant an overall rating of "an adequate performance". The second PER, covering the period from 30 August 1979 to 31 December 1980, and the third PER, covering the period from 1 October 1981 to 30 April 1982, both gave him an overall rating of "a very good performance".

In a memorandum dated 4 March 1981, the Chief, Eastern Africa Regional Section, recommended to the Secretary of the Appointment and Promotion Board (APB) that the Applicant be granted an indefinite appointment, noting that he had worked "diligently and efficiently, and that he had "maintained excellent relations with his colleagues". In a memorandum dated 10 July 1981, the Acting Chief, Eastern Africa Regional Section, also recommended to the Personnel Officer, Career Development Unit, that the Applicant be

granted an indefinite appointment, noting that he was "hardworking and he shows a lot of initiative".

However, on 20 October 1981, the UNHCR Representative in Cameroon submitted to the Chief, Regional Section for West and Central Africa, and the Chief, Personnel Section, an unsatisfactory evaluation of the Applicant's performance from 23 June through 30 September 1981 when he was on mission in Cameroon (hereinafter referred to as "the Representative's evaluation"). He criticized the Applicant's lack of coordination with the field office staff and expressed his opinion that the Applicant "cannot again be made responsible for a field project without close supervision".

In a memorandum dated 2 November 1981, to the Chief, Eastern Africa Regional Section, the Chief, Personnel Section, confirmed that the Applicant's name had been included in the APB agenda. She further noted that his fixed-term appointment had expired on 31 October 1981, and that she had requested a six-month extension "in view of the fact that we have received different views concerning this staff member's performance".

In a memorandum dated 11 November 1981, to the Chief, Personnel Section, the Applicant refuted the Representative's evaluation, noting that his own supervisors were pleased with the results of the mission. In a memorandum dated 11 December 1981, the Chief, Regional Section for West and Central Africa, advised the Chief, Personnel Section, that the Applicant had "accomplished excellent work" in Cameroon; he recommended that the Applicant's appointment be extended, based on his performance, and that he be granted an indefinite appointment.

At its November-December 1981 session, the UNHCR Appointment and Promotion Board considered the Applicant for an indefinite appointment, and recommended that alternatively, in accordance with applicable guidelines, the Applicant's services be terminated upon the expiration of his fixed-term appointment on 30 April 1982. On 23 December 1981, the Acting Chief, Personnel Section, forwarded to the Director of Assistance a copy of the Representative's evaluation, along with the Applicant's rebuttal and his supervisor's memorandum concerning the mission. He noted that the APB had recommended termination

of the Applicant's appointment and requested him to "examine the case and let us have your appraisal".

In a reply dated 22 January 1982, the Director of Assistance noted that neither the Applicant's rebuttal nor his supervisor's memorandum "which indicates that [the Applicant's] performance was excellent" had been brought to the attention of the APB. He therefore requested that the Applicant's appointment be renewed for one year and that his case be reviewed at the 1982 spring session of the APB.

On 3 February 1982, the Head, Personnel Services, informed the Applicant that his appointment would be extended to 30 June 1982. In a memorandum, dated 23 April 1982 and approved by the Head, Regional Bureau for Africa, and the Director of Assistance, the Chief, Horn of Africa Section, wrote to the Head, Personnel Services, "We refer to our recommendation of 10 July 1981 proposing that [the Applicant] be offered an indefinite contract and state that, according to all supervisors concerned, this recommendation still stands".

On 28 April 1983, the Coordinator for the Horn of Africa and the Sudan recommended to the Head, Personnel Administration Unit, that the Applicant's appointment should be extended for one year, noting that "[the Applicant's] conduct and work performance over the year have been satisfactory". The Applicant's appointment was subsequently extended to the end of June 1984. In a memorandum dated 5 December 1983 regarding the Applicant's status, the Head, Regional Bureau for Africa, informed the Chief, Career Development Group, that an indefinite appointment would require service in the field and recommended that "while awaiting the fulfillment of this requirement", his contract be renewed for one year.

During his mission to Cameroon, the Applicant asserts that on 28 July 1981, at approximately 3.30 p.m., outside the UNHCR office and just prior to a meeting, he suffered an accident when the door on his official vehicle hit his right eye. The eye was bruised and remained red for a few weeks. Following his return to Geneva, on 10 March 1982 the Applicant consulted his physician, who referred him to an opthamologist, who on 16 March

1982 diagnosed the Applicant as having a cataract on his right eye. According to his physician, the Applicant "was a victim of trauma during the course of the mission". The Applicant continued to have eye problems necessitating several operations and ultimately resulting in virtual loss of sight in this right eye. From June 1983 onwards, the Applicant, owing to his medical condition, did not report to work.

At its December 1983 session, the APB considered the Applicant's case again and noted that: (a) there were "continuous questions" relating to and "conflicting written evaluations" of the Applicant's performance; (b) as a result of the Applicant's uneven performance, he had become a placement problem; (c) the Applicant "had been absent on extended periods of sick leave since June 1983" and that for the period from 10 October 1983 onwards, he had not produced a medical certificate, creating "unjustified absences"; (d) on various occasions, dating back to the autumn 1981 session, the APB had expressed doubts about the Applicant's overall performance both at headquarters and during short field missions. The APB interviewed the Head, Regional Bureau for Africa, who had recommended that the Applicant be granted a one-year extension to allow him to serve in the field. He stated that, in his view, the Applicant was unsuitable for an indefinite appointment and that, if the only other choice was terminating his services, he would recommend termination. The APB voted 5 to 0, with one abstention, to recommend that the Applicant's appointment not be extended after its expiration in June 1984. The abstaining member considered that the Applicant had not been "afforded a chance to prove himself in the field owing to his current ill health".

In a letter dated 17 February 1984, the Head of Personnel Services, UNHCR, informed the Applicant that the High Commissioner had accepted the Board's recommendation not to extend his appointment beyond its expiration date of 30 June 1984. On 9 March 1984, the Applicant instituted a recourse procedure before the APB. In a reply dated 27 April 1984, the Deputy Head, Personnel Services, informed the Applicant that the APB had considered his recourse and reconfirmed its previous recommendation. The

Applicant's appointment was extended for one month upon its expiration, to 31 July 1984, and subsequently to 8 January 1985, to allow him to exhaust his entitlement to sick leave.

Following the Applicant's separation, a Personnel Administrator wrote to the Applicant on 21 May 1985, regarding his entitlements to repatriation and removal of his personal effects from Geneva to Dakar, and advising him that these entitlements would lapse if travel was not commenced within six months from the date of separation. In a further letter, dated 24 June 1985, the Personnel Administrator again requested information on the Applicant's repatriation plans, noting that his entitlement would expire on 7 July 1985. On 2 July 1985 a moving company apparently contracted by the UNHCR Administration removed the Applicant's personal effects for repatriation transport. In a letter dated 4 October 1985, to a UNHCR Personnel Services staff member, the Applicant referred to a telephone conversation at the beginning of September in which he had informed her that he had relocated to Vienna, and requested that his belongings be sent to him there. He provided several documents attesting to his residence in Vienna.

In a letter dated 8 October 1985, the Chief, Personnel Administration Unit, advised the Applicant that "under the relevant provisions of the Staff Rules, your entitlement to both the repatriation travel and shipment of personal effects have expired" and requested that he contact the United Nations Transport Office "to arrange for the shipment of your personal effects, *at your own expense*, to any destination you wish". In a letter dated 15 October 1985, the Applicant requested the Head, Personnel Services, to authorize the shipment of his personal effects to Vienna, rather than Dakar, and payment of his repatriation grant. In a reply dated 28 October 1985 the Head, Personnel Services, noted that the Applicant had been informed that his entitlement to shipment had lapsed on 7 July 1985. He stated, "we might seek an exception to the Staff Rules setting this limit" because of the Applicant's decision not to return to Dakar and requested that the Applicant return the unused air ticket for Geneva-Dakar and provide evidence of relocation to Vienna, as previously requested for payment of the repatriation grant.

On 6 December 1985, the moving company sent a statement of account to the Applicant in the amount of 4,792.10 Swiss francs, and in a letter dated 12 December 1985, advised him that it would sell his belongings if payment was not made by 15 January 1986. On 10 January 1986, the Applicant sent a check to the moving company in this amount, but the check was subsequently returned by the bank for lack of sufficient funds. A travel authorization form allowing shipment of the Applicant's personal effects to Vienna rather than Dakar was signed on 29 January 1986. According to the Applicant, it was sent to him on 24 February 1986. In a letter dated 10 April 1986, the Applicant was informed by the moving company that in the absence of any response from him to their letter of 3 March 1986, they had advised the United Nations on 12 March 1986 of the partial sale of his belongings, which took place on 13-14 March 1986. The moving company also advised the Applicant as follows: "As shown in the inventory, the weight of your remaining personal effects to be shipped is 1,167 kg. We will transport this weight from our storage facilities to Vienna, the domicile to which you are entitled, and the transport costs for 1,000 kg will be paid by the United Nations." On 1 September 1986, the moving company informed the Applicant that transport of his personal effects to Vienna had been completed and sought instructions for delivery.

An exchange of correspondence ensued between the Applicant and UNHCR officials concerning the decision not to renew his appointment, his request for compensation for the loss of vision in his right eye as a service-incurred injury, and the loss of his personal effects. With regard to the non-renewal of his appointment, the Head of Personnel Services maintained that it was not the result of procedural irregularity or discrimination. With regard to the claim that his injury was service-incurred, the Joint Medical Service concluded that it was not possible to consider the Applicant's loss of sight as attributable to service. The Applicant was further advised by the Head, Personnel Services, that this claim was time-barred as the Applicant had not raised it until more than one year after he separated from UNHCR service.

With regard to the Applicant's loss of personal effects, on 22 January 1987, the Chief, Personnel Administration Section, advised him that the problem "could have been avoided" and that the extra costs incurred were "the consequence of your negligence in not communicating in time the final destination of your personal effects". In conclusion he informed the Applicant that "we consider this matter to be definitively closed".

The Applicant continued to send numerous letters of appeal to UNHCR officials. In a letter to the Applicant, dated 20 January 1988, the Assistant Secretary-General for Human Resources Management noted that his requests for review "were received long after the expiry of the time-limits". He repeated a suggestion previously made that the service-incurred injury claim could be submitted to the Advisory Board on Compensation Claims (ABCC), with a statement of "exceptional circumstances" that prevented submission within the time-limits. With regard to the disposal of the Applicant's personal effects, he stated that the circumstances of the case "are being investigated".

On 28 June 1988, the Applicant submitted a claim to the ABCC for compensation for loss of vision in his right eye as a result of a service-incurred accident, as well as for wrongful termination and loss of personal effects. On 28 July 1988, the ABCC Secretary advised the Applicant that the ABCC could only address his service-incurred accident claim and that the other claims should be addressed to the Joint Appeals Board (JAB). On 8 September 1988, the ABCC considered the Applicant's compensation claim and found "that there were no exceptional circumstances to warrant waiver of the time-limit for submission of claims under article 12 of Appendix D to the Staff Rules". The ABCC therefore recommended that the Applicant's claim should not be accepted. The Secretary-General accepted this recommendation, and his decision was communicated to the Applicant on 15 September 1988.

In a letter dated 22 September 1988, addressed to the JAB Secretary, the Applicant submitted a detailed statement of appeal regarding (a) "service-incurred injury as a result of which led to serious illness and a loss of sight in one eye"; (b) "unwarranted termination of appointment while on sick leave"; and (c) "loss of my personal effects".

On 28 June 1989, the Applicant submitted to the Head, Personnel Services, a request for compensation for the loss of his personal effects. In a reply dated 23 October 1989, the Chief, Personnel Administration Section, advised the Applicant that in accordance with staff rule 107.4 (b), authorization for transfer of personal effects is valid for a period of six months from the date of separation, which in the case of the Applicant would have expired on 8 July 1985. Not having received a response to repeated requests for a moving date, the Administration had issued on 20 May 1985 a PT.8 form to move the Applicant's belongings to Dakar. Noting "the imperatives of the Administration" and "[the Applicant's] deliberate passivity", he informed the Applicant that the Administration had decided to close the matter.

On 24 May 1991, the JAB adopted its report. The JAB concluded that the appeal was receivable, despite non-compliance with the time-limits, as the Applicant's medical problems constituted 'exceptional circumstances' sufficient to justify a waiver of the relevant time limits, in accordance with staff rule 111.2 (e). On the merits of the case, the JAB recommended as follows:

> "15. ... The Panel considers that the proceedings of the 1983 session of the UNHCR Appointments and Promotion Board demonstrate: (a) a lack of transparency and fair presentation of [the Applicant's] career record; (b) a failure to take properly into account the fact that [the Applicant] had an extremely serious eye condition necessitating surgical interventions which, whether or not it was a service-incurred injury, could not be totally detached from his service in the field for the UNHCR (it should be recalled that, subsequently, the eye in question has suffered blindness); and (c) in general, a reaching of conclusions prejudicial to [the Applicant] without full consideration of all the relevant circumstances of the case, resulting in the non-renewal of his contract without full justification. Although it is claimed that the UNHCR Administration made efforts to help [the Applicant] by extending his contract so that he could benefit from his sick leave entitlement, the Panel considers that such efforts were insufficient. The Panel further considers that a more positive and supportive attitude to [the Applicant's] problems was called for in the circumstances.
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> 16. The Panel therefore recommends to the Secretary-General that [the Applicant] be granted compensation for the non-renewal of his fixed-term appointment equivalent to six months of his salary at the time of separation from service. In

making this recommendation, the Panel also takes into consideration the special and poignant humanitarian dimension of the case, and the clearly negative effect of the termination by UNHCR of [the Applicant's] appointment on his subsequent efforts to obtain employment."

On 17 June 1991, the Director of the Department of Administration and Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... While the established procedure was followed and the contested decision was taken on the recommendation of the UNHCR Appointment and Promotion Board, the Secretary-General has decided considering the entire circumstances of the case, to grant you compensation in an amount equivalent to six months net base salary at the rate in effect at the time of your separation from service."

Following the JAB report and recommendations, on 8 July 1991 the Applicant requested the reopening of his compensation claim under article 9 of Appendix D to the Staff Rules. In reply to a letter from the Secretary, dated 14 August 1991, the Applicant explained, in a letter dated 26 September 1991, that the delay in submission of his claim was due to the long process of his illness. In a memorandum dated 24 October 1991, the Secretary of the ABCC advised the Applicant that his file had been transmitted to the Medical Director for review and that the Medical Director had requested "a detailed opthalmological report". Following submission of the information requested, in a memorandum dated 14 February 1992, the Medical Director stated "In her 10 January 1992 report [Dr. Roen] came to the conclusion that [the Applicant's] visual loss was a result of a traumatic cataract sustained by blunt trauma to the right eye in 1981. I am unable to state if this accident occurred while [the Applicant] was performing official duties." On 5 March 1992, in response to a request from the ABCC Secretary, the Applicant submitted evidence of the circumstances of his eye injury. The ABCC reconsidered the case on 31 March 1992 and decided to reopen the case but to defer further consideration as to the waiver of the time-limit and compensation, pending receipt of evidence that a witness presented by the Applicant was an accredited physician acting in official capacity when the incident took place. In a letter dated 20 May 1992, the

doctor in question, who had been in Cameroon with the Applicant, forwarded a copy of his diploma and stated that one evening between May and July 1981 he met the Applicant "who had just returned from a refugee camp with a bruised right eye. He told me he had hurt himself against the door of the UNHCR car". The ABCC reconsidered the case on 8 October 1992, and concluded that "there was no indication that there was a service-incurred injury at the time indicated, nor were there any other circumstances warranting the waiver of the time-limit provided for submission of claims under article 12". On 2 November 1992, the Secretary-General accepted the ABCC recommendation that the claim for compensation should be denied.

On 7 April 1993, the Applicant requested the Secretary-General to reconsider his determination that the Applicant's injury was not attributable to the performance of official duties, and on 3 May 1993 this request was forwarded to the ABCC. The ABCC reconsidered the claim for compensation on 15 June 1993 and concluded that "there was no additional information or new evidence to justify any change to its former recommendation". On 23 June 1993, the Secretary-General accepted its recommendation to deny the claim for compensation, and the Applicant was so informed on 24 June 1993.

On 23 September 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The non-renewal of the Applicant's appointment was unwarranted and unfair in the light of his performance evaluation reports and the recommendation of all his supervisors that he be given an indefinite appointment. Moreover, his appointment was terminated while he was on medical leave, and he had no opportunity to present his case.

2. The Applicant has lost sight in his right eye as a result of a service-incurred accident which occurred while the Applicant was on mission, and he should be compensated accordingly.

3. The nine-month delay in authorization by UNHCR to ship the Applicant's personal effects to Vienna, rather than to his home country, resulted in their sale by the moving and storage company, for which the Applicant should be compensated.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legal expectancy to further employment with UNHCR upon expiration of his fixed-term appointment.

2. The four-month time-limit for submission of claims for service-incurred injury enables the Organization to investigate claims while there is still a reasonable opportunity to interview witnesses and verify allegations of fact, etc. A staff member who waits years before submitting a claim runs the risk that the Organization will not accept the claim.

3. The Applicant's claim regarding the disposal of his personal effects is time-barred and not properly before the Administrative Tribunal. The Administration bears no responsibility, financial or otherwise, for the storage costs of the Applicant's personal effects.

The Tribunal, having deliberated from 30 June to 28 July 1995, now pronounces the following judgement:

I. The application contains three distinct pleas. The first relates to the circumstances surrounding the Applicant's separation from service; the second concerns the disease which led to blindness in his right eye; and the third concerns the loss of his personal effects. The Tribunal will consider each of the three pleas separately.

SEPARATION FROM SERVICE

II. The file submitted to the Joint Appeals Board (JAB) shows that, in the course of his work, the Applicant had been given a positive evaluation. Three of his supervisors had even

recommended him for an indefinite appointment. However, he was not able to obtain such an appointment, in particular because of the unfavourable report drawn up in October 1981 by the UNHCR Representative in Cameroon. This report covered the Applicant's performance on the mission (June-September) for the repatriation of Chadian refugees living in Cameroon. The author of this report, like the Applicant, held an appointment at the P-3 level. He was not the Applicant's supervisor.

III. When the Appointment and Promotion Board held a session in 1981 to determine whether staff members who had been holding fixed-term appointments for more than four years should be granted indefinite appointments, or whether their contracts should be terminated, it reviewed the Applicant's situation, among others. In view of the discrepancies among the various performance evaluation reports on the Applicant, the Board met again in 1983. It called on the Head of the Regional Bureau for Africa, for which the Applicant worked, with a view to obtaining additional information about him. The Head of the Regional Bureau for Africa recommended that the Applicant's contract should be extended for one year, on the grounds that the Applicant was unsuitable for an indefinite appointment; the Applicant's services should therefore be terminated. On the basis of this report, the Board recommended separation from service. The Applicant filed a recourse against this recommendation, but it was confirmed and the Applicant was notified thereof. However, his contract was extended to 8 January 1985 for humanitarian reasons so as to enable him to benefit from his sick leave entitlement in consequence of his health problems.

IV. The Applicant then filed an appeal with the JAB. Taking into consideration the disease afflicting the Applicant's right eye as a result of the accident he had suffered, which will be dealt with later, the Board agreed to hear the appeal even though it was time-barred. The Board noted and expressed regret about the lack of transparency and unfair manner in which the Administration had presented the Applicant's career record.

The Board also noted that the decision not to renew the Applicant's contract had not been fully justified. It therefore concluded that the Applicant should be granted compensation equivalent to six months of his salary. The Administration accepted that recommendation. However, the Applicant was not satisfied with this decision and appealed to the Tribunal.

V. In his conclusions, the Applicant maintains that he should be reinstated in his post and should receive compensation for unwarranted termination.

The Respondent argues for the rejection of this claim on the grounds that a fixed-term appointment does not give rise to any expectancy of renewal when it expires. The Respondent adds that it has discretionary power in this respect.

VI. The Tribunal notes the discrepancies in the Applicant's various performance evaluation reports, which should have led the Administration to be more circumspect in assessing his professional qualities. The Tribunal also notes the negative influence of the report of the UNHCR Representative in Cameroon. It was this report which led the JAB to recommend non-renewal of the Applicant's contract despite other favourable reports prepared by his supervisors.

The Tribunal fully endorses the opinion of the JAB that the Respondent failed to take into account the fact that the Applicant had an eye condition necessitating surgical intervention which could have saved his eye.

On the basis of all these aspects, the Tribunal finds that the Administration did not take all the proper steps required by the particular circumstances of the Applicant's administrative situation, which led to his separation from service. The Tribunal therefore finds that the Applicant should receive compensation over and above what has already been granted to him.

LOSS OF SIGHT IN THE RIGHT EYE

VII. The Applicant's second plea is to obtain compensation for the consequences of the accident he sustained in Cameroon during his official mission for the repatriation of Chadian refugees. According to the Applicant, during his stay in Cameroon his right eye was hit by the door of his official vehicle. Ocular complications resulted, then a cataract and finally, total loss of vision in the right eye. The Board, to which the Applicant had submitted his claim for compensation, denied it on the grounds that the claim had not been submitted within the time-limit laid down in the Staff Rules and that, as regards the merits of the claim, the Applicant had not established that the disease from which he was suffering was the result of a service-incurred accident. The Applicant's appeal against this denial had no better success with the Administration.

VIII. The Respondent maintains that the Applicant's claim is time-barred because it was submitted in 1988, and therefore had not been made within the four-month time-limit specified in Appendix D to the Staff Rules. The Applicant submitted his claim after a much longer period.

IX. The Tribunal, like the JAB, believes that in the case in question, the Applicant should be exempted from the time-limits for humanitarian reasons, in view of the progression of the disease from which he suffered. The Tribunal will therefore consider the merits of the claim.

X. In this respect, the Tribunal notes with regret that the administrative appeals bodies did not make sufficient efforts to establish the causal link between the vehicular accident suffered by the Applicant during an official mission in Cameroon, the cataract he subsequently suffered and the blindness in his right eye which finally resulted. The Tribunal also notes the contradictory nature of the recommendation of the Advisory Board on Compensation Claims (ABCC), which held that, on the one hand, the claim for compensation was time-barred, and on the other, the Applicant's accident was not service-incurred. The

Tribunal considers that in declaring the claim time-barred, the ABCC acted in an arbitrary manner and that this aspect of the case should be considered on its merits.

The Tribunal finds that the ABCC did not set forth its observations, conclusions and the reasons for its recommendations sufficiently clearly (cf. Judgement No. 587, *Davidson* (1993)). For these reasons, the Tribunal remands the case to the ABCC so that a proper report can be prepared. If the results are not satisfactory to the Applicant, he may invoke the provisions of Appendix D, article 17, to request the convening of a medical board.

LOSS OF PERSONAL EFFECTS

XI. At the end of his appointment, in January 1985, the Applicant's personal effects were removed and put in storage pending shipment to Dakar, Senegal, his country of origin, by the moving company ORDEM S.A. The latter had warned him that if he did not pay the charges by a specified date, his effects would be sold. Meanwhile, on an exceptional basis, the Applicant had been authorized to have his belongings shipped to Vienna, Austria, where he had new employment prospects, instead of Dakar. Therefore, on 10 January 1986, he issued a cheque in favour of the ORDEM S.A. company to pay for the storage charges. The cheque was returned by the bank, however, because of insufficient funds. ORDEM S.A. then sold off some of the Applicant's belongings. The rest were sent to Vienna because the transport costs had been paid by UNHCR. The Applicant was to go to the Agence Intercontinental in Vienna to take possession of his belongings. He was also warned that any delay in doing so would be his responsibility. The Applicant apparently did nothing to take delivery of his personal effects but claimed payment of their value from UNHCR, which refused to grant any compensation.

XII. The Applicant appealed to the JAB after the denial of his request for compensation, but the Board did not take any position. Pursuant to the provisions of article 7 of the Statute of the Tribunal, the Respondent was invited to submit comments on this matter, and did so, but the Administration maintained its denial.

XIII. Before the Tribunal, the Applicant maintains that the Respondent is responsible for the loss of his personal effects and claims, as compensation from the Respondent, 50,000 Swiss francs corresponding to the value of these effects and 17,000 Swiss francs for transport costs he incurred. The Respondent argues that the claim for compensation cannot properly be considered by the Tribunal since the JAB has not taken any position on the matter. It adds that the claim is time-barred.

XIV. The Tribunal does not share the Respondent's point of view and considers that the Applicant's claim for compensation is fully receivable. Indeed, the Applicant had submitted it to the JAB as required by the Staff Rules. Following the Administration's denial of the claim, the Applicant had applied to the Tribunal within the prescribed time-limits. The fact that the JAB did not take a position on this claim does not prevent the Tribunal from deeming it receivable. It follows that the Tribunal will consider the merits of the claim.

XV. On the merits of the claim, the file shows that the Applicant had been advised by certified letter of 3 March 1986 that he had to pay by a specified date, freight costs and charges for the storage of his belongings from July 1985; he was required to pay these charges under the Staff Rules of UNHCR. He was also notified that if he did not make the payment, some or all of his belongings would be sold. It may also be seen from the file that the Applicant had been warned by the moving company, ORDEM S.A., in a letter dated 4 July 1986, that he had to arrange to take delivery of his belongings on their arrival in Vienna and that any delay in doing so would be solely his responsibility.

XVI. The Tribunal notes, as indicated above, that the Applicant, although notified by his Administration in a letter dated 8 October 1985 that the storage charges for his personal effects with ORDEM S.A. were his responsibility under staff rule 107.4 (b), did not make arrangements to pay the charges on time. The Tribunal also notes that, although the Applicant was warned by the moving company ORDEM S.A. that he had to pay the charges by a

specified date, on 10 January 1986 he sent a cheque which was returned by the bank because of insufficient funds, and some of his belongings had therefore been sold on 13 and 14 March 1986.

Lastly, the Tribunal notes that it was of his own accord that the Applicant did not claim his belongings on their arrival in Vienna with the Agence Intercontinental, although he had been advised by ORDEM S.A. in its letter of 1 September 1986 that he would be responsible for the consequences of any delay in doing so.

The Tribunal finds that the fact that the Applicant did not personally instruct ORDEM S.A. to ship and store his belongings but that instead the shipment was made on the initiative of UNHCR does not preclude his responsibility. The Tribunal also wishes to note that it was as a result of the delay attributable to the Applicant himself in informing the Administration at the appropriate time of the plan for the shipment of his belongings or of the change in their destination that his belongings were placed in storage. The costs incurred as a result should therefore be borne by the Applicant.

XVII. In the light of all the foregoing, the Tribunal finds that the Applicant himself must be held responsible for the loss of his personal effects. His plea for compensation is therefore rejected.

XVIII. For these reasons, the Tribunal,

1. Decides to grant the Applicant, as damages and interest, a lump sum equivalent to six months net base salary at the time of his separation from service, over and above the compensation already received.

2. Remands the case to the ABCC so that it can prepare a proper report. If the results are not satisfactory, the Applicant can make use of the provisions of Appendix D, article 17, to request the convening of a medical board.

3. Declares unfounded and therefore rejects the claim for compensation for the value of the personal effects.

(Signatures)

Samar SEN
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary